

REGULAR ARBITRATION PANEL

In The Matter of)
United States Post Office)
and)
National Association of Letter Carriers)
)

Grievant: Merlynn Lindly
Case No.: E19N-4E-C 21364382
NALC No: 21-645
Anchorage, Alaska

Before: Arbitrator Earlene R. Baggett-Hayes, Esq.

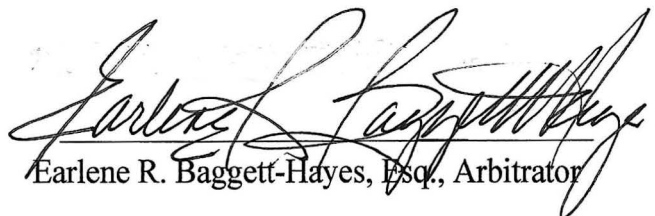
Appearances:

For the U.S. Postal Service: Robert Boston, Labor Relations Specialist
For the Union: James Frankford, Full-Time NALC Advocate, Region 2
Location of Hearing: Anchorage, Alaska
Date of Hearing: December 1, 2022
Date Award Due: February 7, 2023

AWARD

The Grievance is Sustained. Management shall cease and desist violation of prior Step B Decisions. Management shall pay the entire Arbitrator fee, including actual costs and expenses, resulting from the litigation of this matter. The Arbitrator shall retain jurisdiction of this matter for sixty (60) days to handle any inquiries regarding execution of this Award and/or correcting any error or ambiguity.

February 10, 2023


Earlene R. Baggett-Hayes, Esq., Arbitrator

BACKGROUND

Merlynn Lindly (hereafter referred to as “the Grievant,”) holds the bid assignment Express Mail Route 2 at the Main Office. Express 2 duties are to deliver expedited (Priority Express Mail) for zones 99517 and 99503, provide pick up services for local businesses, and conduct collections (blue boxes) later during the day.

The National Service deadline for the delivery of Express Mail was standardized on or about 06/01/2021, to be 6:00 p.m. This was a change from the previous times of 10:30 a.m., 12 p.m., and 3 p.m., which were eliminated, as were higher costs for Sundays. The Anchorage Main decided to accumulate the Express Mail and send it directly from the Plant/AMF to the Plant dock where trucks pick up mail to be transported to the various stations. The Anchorage processing facility now just transports directly to the units, whereas before the Express Mail clerks would do a general sort to the clerk messengers, who would sort by zip code to the carriers. The messengers and carriers would then depart for their assigned zones.

On 08/3/21, a Step B decision was reached in Case # NALC #21-635/USPS GATS E19N-4E-C 21271184 (hereafter referred to as “Step B Decision E19N-4E-C 21271184” or “Step B Decision”) which essentially reflected that the Grievant’s duties before 06/01/2021 would be restored. The Union alleges that Management has failed to restore the Grievant to those duties she performed before the Step B Decision, and has filed a grievance accordingly.

The parties failed to reach an agreement on this matter; therefore, it was submitted to arbitration for resolution. According to contractual procedures, the undersigned was appointed to hear and decide the matter in dispute. An arbitration hearing was conducted on December 1, 2022. During the hearing, the parties were afforded full opportunity to present testimony and

documentary evidence, and to put forth arguments for their respective positions. The Union elected to present an oral closing argument. Management chose to submit a closing brief, after which the Union responded via an email to the Arbitrator and the Management advocate. Management responded to the Union's reply to the Management closing statement via email. The Management document was not reviewed by the Arbitrator as it was not considered to be within the arbitration procedures. The record was closed upon receipt of the Union's reply email.

ISSUE

Did Management violate the National Agreement and prior grievance settlements by failing to comply with Step B Decision? If so, what is the appropriate remedy?

CONTRACT and/or OTHER PROVISIONS

Article 3. Management Rights

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retrain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted...

Article 15.3.A.

The Parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the JCAM.

POSITIONS OF THE PARTIES

Position of the Union

Management failed to comply with Step B decision, E19N-4E-C 21271184, NALC # 21-645/USPS, dated 08/03/21.

The Postal Service violated the National Agreement by failing to comply with the Step B decision.

The Step B Team ordered Anchorage Management to restore the duties of the Express Mail routes to what they were prior to 06/01/2021, and they have failed to do so.

The Union requests that the grievance be granted with Management being required to comply with Article 15, cease and assist violating Article 15.3.A, adhere to M-01492, comply with Step B Decision E19-4E- 21271184, pay the Grievant an additional 50% of her base hourly rate for working out of her bid assignment, pay the Grievant an additional \$10 a day for failure to comply with Step B Decision, pay Arbitrator's fees and costs, or any other appropriate remedy.

Position of the Postal Service

The Grievant's duties have not changed. She continues to deliver Expedited Mail, provide pick-up service and perform collections.

Management has the right to ensure the efficiency of service, reduce costs and ascertain efficiency by adjusting the time/days and the number of transportation trips between the Plant and the Anchorage Stations.

Management has complied with Article 15 and the Step B decision, which did not fully address these circumstances in this case.

ANALYSIS AND DECISION

The burden of proof, in this case, lies with the Union to establish by a preponderance of the evidence that the Postal Service failed to follow the agreement reached in Step B Decision E19N-4E-C 21271184. The Arbitrator's issue in this matter is a narrow one. Her role is to determine whether Management's actions or inactions, were consistent with the provision(s) of the prior Step B Decision. The answer is "No."

Prior to 06/01/2021, the Grievant had the following duties: To deliver expedited mail, provide pick-up service and do collections. Express Mail commitment delivery guarantees were for 10:30 am, 12 pm, or 3 pm. Starting on 06/01/2021, the USPS changed the guaranteed commitment times for Express Mail to customers to 6 pm, which resulted in this grievance.

On 08/3/21, a Step B Decision was reached in Case # NALC #21-635/USPS GATS 4E 19N-4E-C 21271184 which states as follows, in part:

The Dispute Resolution Team has resolved this grievance. Based on the information contained in the case file and the arguments made therein, Management was in violation of the National Agreement. Management is instructed to comply with Article 41.1.C.4 regarding the grievant working their bid assignment as posted. The grievant's duties will be returned to what they were prior to 06/01/2021.

Management has the right to ensure the efficiency of service, reduce costs and ascertain efficiency by adjusting the time/days and the number of transportation trips between the Plant and the Anchorage Stations. Consolidating the various prior deadline times to the 6:00 p.m. deadline on the committed delivery date allowed Management to reduce the number of transportation trips between processing and delivery. Management asserts that the modified system reduces daily outgoing transportation from the Plant to the city stations, by combining arriving Express Mail into one or two larger dispatches per day, or grouping Express Mail with other mail items. According to Management, this reduces the transportation runs from the Plant to the ten (10) city stations and conforms with the 6:00 p.m. Express Mail delivery deadline.

What occurred in the matter resolved by the Step B Decision was that the Grievant's assignment was initially to deliver Express Mail for two (2) zip codes, along with pick-up services,

collections and other duties as assigned. To do this, the carrier would report to the Main Office, load Express Mail into a vehicle, and deliver those items as needed until pick-up and collections were necessary. As of 06/01/2021, instead of the Grievant picking up the mail at the Main Office, it was sorted and distributed to ten (10) outpost stations for handling, thus creating this dispute.

It is undeniable that the parties entered into Step B Decision 4E 19N-4E-C 21271184 to resolve the dispute. The Step B Decision states and intends that the Grievant's Express Mail routes (duties) were to be returned to what they were before 06/01/2021. To "return" means to "restore" or "replace." According to the Daniel Webster Dictionary, the word "restore" means to "put back, reinstate, bring back, reimpose." This means that the pre-existing situation, once changed, was to have been changed back to what it previously was. The Union contends, and the Arbitrator agrees, that this means that Express Mail carriers are to pick up their mail at the main sorting facility. Contrarily, it is still staged daily at the Main Office and sent to the outpost stations. Consequently, Management has failed to adhere to the Step B Decision.

Management's argument that the Step B Decision merely instructed Management to restore the Grievant to the same duties that existed when she obtained the bid assignment, and that Express Mail was available for the Grievant to sort in AMF at the time, is unconvincing. If Express Mail were available before the Step B Decision in the same manner that it was available subsequent to the Step B Decision, there would be no reason for restoring the Grievant to anything, as nothing would have changed. The word "return" implies that a change took place, and one did take place. The plain meaning of the Step B Decision verbiage is that the parties agreed that whatever work the Grievant was doing prior to the 06/01/2021 change was to have been restored. There was a process in place before the change, and there was a process in place after the change. The Step B

Decision clearly instructed Management to return to the “before” process. Something that was changed was required to have been put back or reinstated. Management failed to change anything, thus violating the Step B Decision.

Management avers that Step B Decision did not consider the fact that the Grievant’s existing duties were not altered. Management also contends that the matter was not fully addressed. The Union responds that these arguments lack merit or proof. In the Arbitrator’s estimation, if the parties did not consider or address whether the Grievant’s duties were altered, the Arbitrator is unwilling to do so at this time.

In a similar vein, Management also claims that the facts of the instant case were not envisioned by the Step B Decision. The agreement language is absolute, with no apparent contingencies or conditional statements built in. The language is clear. It is well-noted that if Management desires to appeal decisions, there are procedures for doing so. If Management otherwise wants to modify work assignments, there are procedures for doing so. To flatly ignore an agreed-upon Step B Decision is unacceptable and unsupportable. In fact, in this case, the Postal Service witnesses (former Postmaster Sisco and Management Formal A Rep, Amador-Salinas) affirmed, or admitted, that subsequent to the Step B Decision E19-4E-C 21271184, no changes were made to bid assignments, and acknowledged that the Step B Decision required that the Postal Service restore the duties to what they were prior to 06/01/2021.

The Arbitrator recognizes that in accordance with M- 01517, compliance with arbitration awards and grievance settlements is not optional. In this regard, by failing to adhere to the Step B Decision, the Postal Service is in violation of the national contract. The Union attached numerous citations which purportedly reflected Management’s renegeing on previous agreements reached

by the parties. Because of the numerous distinctions between those cases and this one, the Arbitrator makes note of them but renders her own independent decision. It is also notable that according to M-01840, where the parties have a dispute as to whether a Step B Settlement is invalid, the issue must be reviewed with the national level parties. The Postal Service did not challenge the Step B Decision relied on in the case upon us.

The Union fashions its remedy argument around the Step B Decision violation and claims that the Grievant was working outside of her bid assignment because Management failed to return her to the duties as assigned before 06/01/2021. While the Arbitrator does not see this claim as the specific issue to be addressed in this case, the Union's bid assignment claim may conceivably have a relationship to the remedies sought and is therefore addressed herein.

The Union claims Management unilaterally removed a portion of the identified duties of the Grievant's bid assignment. Those identified duties, however, were not flushed out or presented during the Arbitration hearing, except to identify it as Express Mail. If the Union was alluding to the alleged decrease in the Express Mail delivered by the Grievant, the Union did not explicate its contention regarding this claim. The Grievant is performing the duties of the bid assignment as posted. There was no claim that the Grievant's wages, hours, or working conditions were affected. In addition, the Union has failed to identify any specific aspect of the Grievant's job performance that was worked outside of her bid assignment. Consequently, the Arbitrator is not persuaded by the Union's claim that Management unilaterally abolished a portion of the identified duties of the bid assignment or worked her beyond the bid assignment.

Management vociferously proclaims that the Grievant has worked within her bid assignment during the entire time. During the arbitration hearing, Management contended that the

Grievant was assigned to perform work in each of the three (3) areas (Express Mail, Parcels, and Collections) both before and after 06/01/2021. According to Palmer Postmaster Amador-Salinas, after retrieving keys, a scanner, and a vehicle, the Grievant reports to her bid-assigned zip codes at the units to retrieve and deliver Priority Express Mail for her bid zones. Amador-Salinas added once all Priority Express Mail that is available to the Grievant at the time is delivered, if there is undertime before she starts collections, that time is filled with parcels and followed by hand-offs, if there is insufficient work to fill in before the start of collections.

The testimony did not support that the Grievant was prevented from performing all of the Express Mail work. While some of the work may have been diverted (which is what the Grievant stated during her interview), testimony supported that other Express Mail work was available to her. In this regard, Express Mail was not totally removed from her bid assignment. Because the bid assignment does not specifically instruct that any particular portion of the assignment must be attributed to Express Mail, and the Arbitrator is not inclined to second guess the bid assignment, as long as the Grievant continued to be required to deliver Express Mail, in addition to her other two (2) duties, Management did not commit a violation. The Arbitrator notes that there may be differences between what the Grievant prefers to do and what Management instructs the Grievant to do, but Management controls the job assignment as long as it is not inconsistent with the bid assignment.

The Grievant's testimony and interview notes were telling. During her interview, she indicated that on June 7, 2021, upon her return to work, she was told that she would no longer be delivering Express Mail and that she would be sent to stations to deliver parcels or whatever else the station managers wanted her to do until it was time for pick-ups and collections. She

complained that she would report for work and see the mail that she previously sorted already sorted and she would be assigned to some other carriers' bid assignment. According to the Grievant, at approximately 11:30, the Express Mail that belongs to her bid assignment gets delivered to the stations and some other carriers and members of management deliver that Express Mail that belongs to her bid assignment. The Grievant did not deny, and testimony did not persuade, that the Grievant is no longer handling any Express Mail. Nor did she prove that she was working outside of her bid assignment.

The Union requests compensation for Management's non-compliance with the Step B Decision. The Union established that the Postal Service failed to follow the direction of the Step B Decision; however, the Union did not prove that the Grievant works outside of her bid assignment. The Union did not explicate any particular job duties performed by the Grievant that are inconsistent with her bid assignment. Nor did the Union persuade the Arbitrator that other employees perform work in the Grievant's bid assignment. Although the Union claims Management is not allowing the Grievant to turn in PS Form 3996s to show she is working off assignment, and that Management is not allowing employees to clock to different functions to show they are working off assignment, the record did not sufficiently establish this claim.

The Union has met its burden and proved that Management failed to follow the Step B Decision. The Grievant in this matter has not suffered any financial loss as a result of Management's violation. Although the contract between the parties is silent as to the remedy power of an Arbitrator who has determined that a violation of the agreement exists, the Arbitrator notes that a portion of the jointly-agreed-upon issue in the instant case is, "What shall the remedy be?" To the Arbitrator, this question presupposes that both parties agree that a possibility exists

for a remedy to be assessed. Also, implicit in the question being directed to the Arbitrator is the assumption that the Arbitrator will decide what that remedy will be, if one is deemed to be appropriate.

This Arbitrator is inclined to follow the lead of Arbitrator Mittenthal, who stated that damages should be limited to the amount necessary to make the injured employee whole. This Arbitrator agrees with the proposition that a party should be placed in the position they would have been in but for the violation. The Arbitrator is not inclined, based on the facts of this case, to assign a dollar amount to a non-pecuniary injury.

CONCLUSION

The Arbitrator recognizes that Management has the right to adjust the time and number of transportation trips between the plant and the Anchorage stations to ensure increased efficiency and to reduce costs. Also, Management is authorized to determine the methods, means, and personnel to conduct operations and make business decisions in the best interest of the public.

The Union proved by a preponderance of the evidence that the Postal Service violated the national agreement by refusing or failing to follow Step B Decision 4E 19N-4E-C 21271184. Although Management claims that not considered, Management took no action to appeal or otherwise address outstanding issues. Consequently, the Step B Decision continues to stand, and Management is expected to adhere to it.

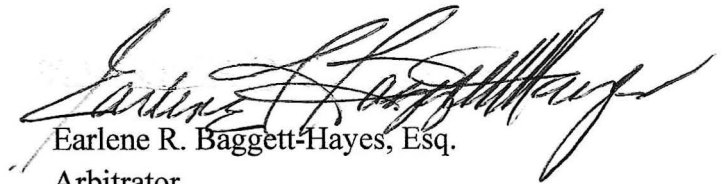
The Union did not establish that the Grievant worked outside of her bid assignment, or that other employees performed work within the Grievant's bid assignment. The Grievant continues to work within her bid assignment. Testimony and evidence establish that the

Grievant's duties did not change. Testimony revealed that the Grievant was instructed to pick up Express Mail at the zones she normally services and deliver it. Nothing in the contract prohibits Management from changing the location from the Main Office to the Stations. The Grievant continues to deliver expedited mail, provide pick-up service and perform collections. Not all Express Mail duties were taken away from the Grievant. How Express Mail was distributed was modified. While this does not excuse the violation, in this Arbitrator's view, it impacts the severity of the remedy to be assessed.

AWARD

The Grievance is Sustained. Management shall cease and desist violation of prior Step B Decisions. Management shall pay the entire Arbitrator fee, including actual costs and expenses, resulting from the litigation of this matter. The Arbitrator shall retain jurisdiction of this matter for sixty (60) days to handle any inquiries regarding the execution of this Award and/or correct any error or ambiguity.

Date: February 10, 2023


Earlene R. Baggett-Hayes, Esq.
Arbitrator